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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/578,278	05/05/2006	Eric B. Michalak	026032-5038	2120
26371	7590	10/31/2007		
FOLEY & LARDNER LLP 777 EAST WISCONSIN AVENUE MILWAUKEE, WI 53202-5306			EXAMINER GARRETT, ERIKA P	
			ART UNIT 3636	PAPER NUMBER
			MAIL DATE 10/31/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/578,278	Applicant(s) MICHALAK ET AL.	
	Examiner Erika Garrett	Art Unit 3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>5/5/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeKraker (6,817,668) in view of Delmonte (5,664,841). Dekraker discloses the use of a seat (20) for use by an occupant comprising a seat base configured to be supported in the vehicle; a back frame (22) including a first transverse member, a first side member and a second side member, wherein the first transverse member interconnects each of the side members at a location toward an upper end of the back frame, the back frame further including a second transverse member interconnecting the first and second side members a spaced distance from the first transverse member; a compliant back (31) member having a first end operably connected to the first transverse member and a second end operably connected to the second transverse member.
3. The compliant back is coupled to the second transverse member by at least one pivot member (23, 25) such that the upper portion of the compliant back extends in a cantilevered fashion over the upper end of the back frame and a spaced distance from the back frame, wherein when the occupant in the seat leans into the

upper portion of the compliant back, the upper portion can flex about the pivot until contacting the upper end of the back frame.

4. Further including a side bolster (30), with one side bolster coupled to each of the first and second side members of the back frame and extended from the side members. The side bolsters are aligned with the compliant back such that the compliant back can be moved clear of the side bolsters. The biasing member (34,273) is coupled to at least one of the side members and the lower portion of the compliant back. The biasing member includes an adjuster to vary the tension in the biasing member to effect tension in the compliant back. The biasing member includes at least one spring (303,273).

5. The seat further includes a change of position mechanism coupled to the back frame and seat base, wherein the back frame is moved in proportional relation to the seat base.

6. DeKraker fails to show the use of a biasing member having a first end including a pair of slides in the form of rollers which are aligned and operatively engage the compliant back member and a second end being anchored with respect to the back frame and at least one electric motor to change the position of the seat.

7. DalMonte teaches the use of a pair of slides (11) in the form of rollers (17,18) which are aligned and operatively engage the compliant back member and a second end being anchored with respect to the back frame and at least one electric motor (not shown).

8. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the seat with slides and a motor as taught by DalMonte, in order to change the position or location of the seatback.

Allowable Subject Matter

9. Claims 13-14 are allowed.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents are cited to further show the state of the art with respect to seat: U.S Pat. No. 5782536, 6789846, and 5505520.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Erika Garrett whose telephone number is 571-272-6859. The examiner can normally be reached on Monday-Thursday 8:30 a.m.-6:30 p.m. .

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Dunn can be reached on 571-272-6670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Erika Garrett
Patent Examiner
Art Unit 3636

EG
October 29, 2007